

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: DAIRY FARMERS OF)	
AMERICA, INC. CHEESE ANTITRUST)	Master File No. 09-cv-03690
LITIGATION)	MDL No. 2031
)	Judge Robert M. Dow Jr.
THIS DOCUMENT RELATES TO:)	Magistrate Judge Maria Valdez
)	
DIRECT PURCHASER ACTION)	
)	

**THE DIRECT PURCHASER PLAINTIFFS' MOTION TO AMEND
PRELIMINARY APPROVAL MOTION**

The Direct Purchaser Plaintiffs¹ ("Plaintiffs") respectfully request leave to amend their motion seeking preliminary approval [Docket No. 335] of their proposed Settlement [Docket No. 327-1] with Dairy Farmers of America, Inc. ("DFA") and the other Settling Defendants.

Specifically, Plaintiffs seek to amend their preliminary approval motion in order to take account of this Court's recent November 15, 2013 order [Docket No. 413] appointing Lovell Stewart Halebian Jacobson LLP ("Lovell Stewart") as sole lead counsel for the direct purchasers. The parties to the Settlement have executed an "Amendment" to the Settlement reflecting the necessary changes. The Amendment to the Settlement is attached hereto as Exhibit A. In support of their motion, Plaintiffs state as follows.

1. On February 5, 2010, the Court appointed Lovell Stewart and Wolf Haldenstein Adler Freeman & Herz LLC ("Wolf") as co-lead counsel for the direct purchasers. Docket No. 61; *see also* Docket No. 63.

2. On or about December 24, 2012, the Plaintiffs and the Settling Defendants entered into a Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. Docket

¹ Capitalized terms that are defined in the Settlement Agreement have the same meaning herein as in the Settlement Agreement.

Nos. 327-1. The Settlement contemplated Lovell Stewart and Wolf acting as co-lead counsel for the proposed settlement Class. *See* Scheduling Order [Docket No. 327-1 at p. 130 of 139] at ¶3.

3. On March 28, 2013, the Direct Purchaser Plaintiffs filed a motion seeking preliminary approval of the proposed Settlement. Docket No. 335. Among other things, the preliminary approval motion sought entry of a Scheduling Order [Docket No. 327-1 at pp. 128-139] that would appoint Lovell Stewart and Wolf as co-lead counsel for the proposed settlement Class. *See* Scheduling Order at ¶3.

4. On November 15, 2013, this Court entered an order that modified the prior appointment of Lovell Stewart and Wolf as co-lead counsel [Docket Nos. 61 and 63] and appointed Lovell Stewart as sole lead counsel for the direct purchasers. Docket No. 413.

5. On November 26, 2013, the parties to the Settlement executed an Amendment to the Settlement Agreement, which amended the Settlement Agreement in certain respects to reflect this Court's recent appointment of Lovell Stewart as sole lead counsel. *See* Amendment attached as Exhibit A hereto.

6. Specifically, the Amendment (a) added the defined term "Lead Counsel" which is defined to include only Lovell Stewart; (b) deleted and otherwise removed the previously defined term "Co-Lead Counsel," in Section 1(h) of the Settlement and replaced each and every use of the term "Co-Lead Counsel" with "Lead Counsel" in the Settlement Agreement and the Exhibits thereto; (c) amended Section 27 of the Settlement such that only Lovell Stewart will receive notices provided for under the Settlement; (d) amended paragraph 3 of the Scheduling Order (Exhibit H to the Settlement) so as to appoint only Lovell Stewart as class counsel for the proposed settlement Class; and (e) amended the long form notice (Exhibit A to the Settlement) in order to take account of the foregoing amendments. *Id.*

WHEREFORE, in order to take account of the Court's recent appointment of Lovell Stewart as sole lead counsel [Docket No. 413], Plaintiffs respectfully request that the Court enter an Order that: (a) deems the proposed Settlement, for which Plaintiffs seek preliminary approval, to include the attached Amendment (*see* Exhibit A hereto) executed by the parties to the Settlement and (b) amends Plaintiffs' preliminary approval motion [Docket No. 335] to incorporate the changes in the Amendment, including that the preliminary approval motion seeks entry of the attached revised Scheduling Order (*see* Exhibit A-1 hereto) that appoints only Lovell Stewart as class counsel for the proposed settlement Class.

Dated: November 26, 2013

Respectfully submitted,

/s/ Christopher Lovell

Christopher Lovell

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